of possession of stolen property should be distinguished because there the main question is whether the accused knew that the goods were stolen, not whether he knew their nature.

Where the accused is a carrier, a different set of questions arises because a bare carrier of goods ordinarily has only custody, not amounting to possession. Further, the position of a carrier of goods alone is distinguishable from that of a carrier of passengers with their baggage. When a woman boards a taxi her handbag remains in her exclusive possession throughout and the driver does not have even joint custody. The fact that he helps her to load a suitcase does not necessarily alter this position though if she temporarily left the vehicle he would have custody during her absence. Where the goods are not ordinary passengers' luggage other questions may arise. Each case depends on its own facts.

In the present case the learned trial Judge amplified the *dictum* in *Toh Ah Loh, supra,* with illustrations explanatory of the element of control by several persons jointly; these directions had direct and proper reference to those of the accused who were concerned in splitting the bombs in the swamp. He laid some emphasis on the association of all five in the enterprise. He carefully directed the Jury to consider the case of each accused separately. He said that the mere fact that the appellant knew that the contents of the sacks in the car were explosive would not, of itself, be sufficient to indicate that he was one of the people controlling the bombs on the other side of the river. Later he said that the defence of the appellant was, in effect, that he was only the driver and if the Jury thought that he was only the driver and that was the only reason he was there, then he would be entitled to be acquitted.

The combined effect of these directions, coupled with the references to the bombs having been stolen from the R.A.F., a fact which was not really relevant to the charge, may have been to leave the Jury under the impression that if they found the accused to have had guilty knowledge of the nature of the enterprise they could infer that in the earlier phase he had possession of the bombs in the swamp, jointly with the others. This was not a correct view.

Where a man is charged with possession of contraband the question whether he knew the goods were contraband is one issue. The question whether he had possession is a separate, and complex, issue involving a mental element. The mental element in "possession" is not knowledge as to whether the goods are contraband.

A carrier may or may not have guilty knowledge; he may or may not have possession; if he has guilty knowledge without possession he may be convicted of abetment or of some other statutory offence.

In the case before us the two main grounds of appeal are not independent; they interlock. We think that there was insufficient analysis of the facts, particularly with regard to the crossing of the river, and that the Jury were insufficiently directed as to the points they should consider in deciding whether the appellant (as distinct from the other accused) participated in dealing with the bombs themselves, which were the subject of the only charge. We also think that there was insufficient analysis of the circumstances in which the appellant conveyed the goods, with relation to the law of possession by carriers, to enable them to appreciate fully the distinction in law between the case against the appellant and the case against the other accused. For these reasons we are of opinion that the conviction of the appellant was unsatisfactory and must be quashed.

Conviction quashed.

L. v. L.

[O. C. J. (Tan Ah Tah J.) May 4, 1956]

[Singapore — Divorce No. 55 of 1955]

Divorce — Nullity — Incapacity of husband — No apparent defect — "Consummation" — Erectio and intromissio — Wife virgo intacta after 2 years of marriage — Incapacity quoad hanc — Presumption of impotence — Decree nisi.

During 2 years' cohabitation following a ceremony of marriage the man made unsuccessful attempts to consummate the marriage, and in fact it was never consummated. The Court granted the woman on her petition a decree *nisi* of nullity, notwithstanding that the respondent was apparently capable, acting on the presumption of law that the respondent was incapable.

Cases referred to in argument :—

(1) *R. v. R.* (1952) 1 All E.R. 1194.
(2) *D–e v. A–g* (1845), 1 Rob. Ecc. 279.
(3) *G. v. G.* (1912) P. 173.
(4) *Kay v. Kay* (1935), 152 L.T. 264.

DIVORCE PETITION heard in *Camera.*

This was a petition by the woman for a decree of nullity of marriage on the ground of the respondent's inability to consummate the marriage. The respondent did not defend the petition.

The parties were married in 1953 at the Registry of Marriages, Singapore. Several attempts were made by the respondent to consummate the marriage but in each case he failed to effect *intromissio* at the crucial moment as he could not maintain *erectio.* They lived together for nearly two years before she left him. The medical inspectors appointed by the Court, reported

to the effect that the husband's parts were anatomically normal and that he was apparently capable of performing the act of generation and that the wife was found to be *virgo intacta,* and that there was no impediment on her part to prevent consummation of the marriage.

Francis T. Seow for the petitioner addressed on two propositions, *viz:*

(1) Consummation as understood in law, and

(2) The law of impotence with emphasis on the doctrine of *impotentia quoad hunc vel hanc.*

On his first proposition he submitted that consummation in the proper meaning of the term is ordinary and complete sexual intercourse. The former Ecclesiastical Courts described it as *vera copula* but whatever definition is used, two essentials must be present before there can be consummation in law. There must be (a) *erectio* and (b) *intromissio.* Nothing less will do. It has been held that the possibility of incipient or imperfect coitus is not enough to establish consummation. Vide *R. v. R.*[1] at p. 1197, where the learned Judge quoted Dr. Lushington in *D-e v. A-g*[2] :—

"If there be a reasonable probability that the lady can be made capable of a *vera copula* — of the natural sort of coitus, though without power of conception — I cannot pronounce this marriage void. If, on the contrary, she is not and cannot be made capable of more than an incipient, imperfect, and unnatural coitus, I would pronounce the marriage void"

and at p. 1198:

"Therefore, in my view, *vera copula* consists of *erectio* and *intromissio.* This is the view of the author in **Jackson on the Formation and Annulment of Marriage** from which I have derived considerable assistance. At pp. 209 and 210 the learned author says: 'Contraceptive devices do not prevent intercourse — *Vera copula* consists of *erectio* and *intromissio.* Once this has been achieved, the fact that consummation, in the sense of potential conception, has been made impossible by the use by one or both of the parties of contraceptives, is irrelevant. Only intercourse in the sense of *vera copula* is necessary to 'consummate' a marriage. A person is in law impotent who is *incapax copulandi,* apart from the question of whether he or she is *incapax procreandi*'."

He then turned to his second proposition. Impotence is therefore the physical inability of a man or woman to perform the act of sexual intercourse. It appears from the medical evidence that the respondent is normal in that there is no apparent physical defect to prevent or hinder the consummation of the marriage by him. But for that matter so is the petitioner.

He submitted that the doctrine of *quoad hanc* applies. That is to say, a person may be generally capable of performing the act of coition and yet incapable of performing it with a particular individual, *quoad hunc vel hanc,* owing to certain causes. Vide *Latey* (14th Ed.) at p. 197, and said :—

"Your Lordship has heard from the petitioner of the respondent's attempt to effect his conjugal rights: and my submission is reinforced by the fact that the petitioner is *virgo intacta* after the parties have cohabited together for about 2 years before the petitioner finally left him. My submission is further reinforced by the learned editor of **Rayden** on Divorce (6th Ed.) at p. 88 to the effect that where a marriage remains unconsummated and both man and woman appear to be capable, there is a presumption that the incapacity must be imputed to the man."

He then cited 2 cases: *G. v. G.*[3] (Counsel then read out the facts of the case) and then quoted *G. v. G.*[3] (*ibid.* at p. 174) where the learned Judge said :—

"Their stories are absolutely inconsistent, but that is immaterial, if I am satisfied that, *quoad hanc et quoad hunc,* these people cannot consummate the marriage. If for some reason which is not quite clear but in fact, the Court is satisfied that the marriage cannot be consummated, then the Court is entitled to annul the marriage and not tie the two people together for the rest of their lives in a state of misery"

and *Kay v. Kay*[4] where the marriage was never consummated as the husband made no attempt to consummate it; and the woman was found to be *virgo intacta* through no fault of her own after a *triennial* cohabitation, non-consummation was attributed by law to the husband and the onus was on the man to rebut the presumption.

The respondent, he observed had done nothing to disprove these allegations. It was for the respondent to rebut the presumption, if he could; and it was a heavy onus if he chose to assume it — but he saw fit to content himself with entering an appearance limited to costs.

Tan Ah Tah J. pronounced a decree *nisi.*

Solicitors: *Tan, Rajah & Cheah*

TAN ENG SENG v. TEO SOON KIAT & ORS.

[O. C. J. (Whyatt C.J.) May 18, 1956]

[Singapore — Civil Suit No. 370 of 1955]

Landlord and Tenant — Control of Rent Ordinance, 1953 — Statutory tenant — Whether statutory tenant can sublet the whole of the premises — Doctrine of non-occupation.

The plaintiff in this case was the owner of the premises known as No. 119 Beach Road which were let to one Ng Guat Neo at a monthly rent of $120. Ng Guat Neo sublet the ground floor to one Tan Cheok Chua, the proprietor of Nam Ah & Co., the third defendant in this case at a monthly rent of $120 which included the cost of light, water and use of telephone. In September 1953 the plaintiff served a notice to quit on the chief tenant which expired on October 31, 1953. The third defendant remained in possession and continued to pay $120 per month to the chief tenant. In 1954 the chief tenant became ill and left the premises. Before she left she entered into a new arrangement with the third defendant whereby she gave him possession of the first floor in addition to the ground floor at the rent of $132 per month in place of the ground floor only at the rent of $120 per month, inclusive of light, water and telephone. The plaintiff claimed possession of the premises.

Held: (1) after the termination of the chief tenant's contractual tenancy the third defendant became a statutory tenant of the ground floor holding the premises from the chief tenant on the terms of the former contractual sub-tenancy so far as the same were consistent with the